

§ 37.650

Your inclusion in the TIA of the standard access-to-records provision for those for-profit participants, as discussed in § 37.915(a), gives the necessary access in the event that you or administrative agreements officers later need to request audits to address award-specific issues that arise.

(b) For each other for-profit participant, you:

(1) Should require that the participant have an independent auditor (*i.e.*, the DCAA or an independent public accountant) conduct periodic audits of its systems if it expends \$500,000 or more per year in TIAs and other Federal assistance awards. A prime reason for including this requirement is that the Federal Government, for an expenditure-based award, necessarily relies on amounts reported by the participant's systems when it sets payment amounts or adjusts performance outcomes. The periodic audit provides some assurance that the reported amounts are reliable.

(2) Must ensure that the award provides an independent auditor the access needed for award-specific audits, to be performed at the request of the cognizant administrative agreements officer if issues arise that require audit support. However, consistent with the government-wide policies on single audits that apply to nonprofit participants (see § 37.665), you should rely on periodic audits to the maximum extent possible to resolve any award-specific issues.

§ 37.650 Who must I identify as the auditor for a for-profit participant?

The auditor that you will identify in the expenditure-based TIA to perform periodic and award-specific audits of a for-profit participant depends on the circumstances, as follows:

(a) You may provide that an IPA will be the auditor for a for-profit participant that does not meet the criteria in paragraph (b) of this section, but only if the participant will not agree to give the DCAA access to the necessary books and records for audit purposes. Note that the allocable portion of the costs of the IPA's audit may be reimbursable under the TIA, as described in § 37.660(b). The IPA should be the one that the participant uses to perform other audits (*e.g.*, of its financial state-

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ment), to minimize added burdens and costs. You must document in the award file the participant's unwillingness to give the DCAA access. The DCAA is to be the auditor if the participant grants the necessary access.

(b) Except as provided in paragraph (c) of this section, you must identify the DCAA as the auditor for any for-profit participant that is subject to DCAA audits because it is currently performing under a Federal award that is subject to the:

(1) Cost principles in 48 CFR part 31 of the Federal Acquisition Regulation (FAR) and 48 CFR part 231 of the Defense FAR Supplement; or

(2) Cost Accounting Standards in 48 CFR chapter 99.

(c) If there are programmatic or business reasons that justify the use of an auditor other than the DCAA for a for-profit participant that meets the criteria in paragraph (b) of this section, you may provide that an IPA will be the auditor for that participant if you obtain prior approval from the Office of the Inspector General, DoD. You must submit requests for prior approval to the Assistant Inspector General (Auditing), 400 Army-Navy Drive, Arlington, VA 22202. Your request must include the name and address of the business unit(s) for which IPAs will be used. It also must explain why you judge that the participant will not give the DCAA the necessary access to records for audit purposes (*e.g.*, you may submit a statement to that effect from the participant). The OIG, DoD, will respond within five working days of receiving the request for prior approval, either by notifying you of the decision (approval or disapproval) or giving you a date by which they will notify you of the decision.

§ 37.655 Must I specify the frequency of IPAs' periodic audits of for-profit participants?

If your expenditure-based TIA provides for periodic audits of a for-profit participant by an IPA, you must specify the frequency for those audits. You should consider having an audit performed during the first year of the award, when the participant has its IPA do its next financial statement audit, unless the participant already

had a systems audit due to other Federal awards within the past two years. The frequency thereafter may vary depending upon the dollars the participant is expending annually under the award, but it is not unreasonable to require an updated audit every two to three years to reverify that the participant's systems are reliable (the audit then would cover the two or three-year period between audits). The DCAA is a source of advice on audit frequencies if your TIA provides for audits by IPAs.

§ 37.660 What else must I specify concerning audits of for-profit participants by IPAs?

If your expenditure-based TIA provides for audits of a for-profit participant by an IPA, you also must specify:

(a) What periodic audits are to cover. It is important that you specify audit coverage that is only as broad as needed to provide reasonable assurance of the participant's compliance with award terms that have a direct and material effect on the research project. Appendix C to this part provides guidance to for-profit participants and their IPAs that you may use for this purpose. The DCAA and the OIG, DoD, also can provide advice to help you set appropriate limits on audit objectives and scope.

(b) Who will pay for periodic and award-specific audits. The allocable portion of the costs of any audits by IPAs may be reimbursable under the TIA. The costs may be direct charges or allocated indirect costs, consistent with the participant's accounting system and practices.

(c) The auditing standards that the IPA will use. Unless you receive prior approval from the OIG, DoD, to do otherwise, you must provide that the IPA will perform the audits in accordance with the Generally Accepted Government Auditing Standards.⁴

(d) The available remedies for non-compliance. The agreement must provide that the participant may not charge costs to the award for any audit

that the agreements officer, with the advice of the OIG, DoD, determines was not performed in accordance with the Generally Accepted Government Auditing Standards or other terms of the agreement. It also must provide that the Government has the right to require the participant to have the IPA take corrective action and, if corrective action is not taken, that the agreements officer has recourse to any of the remedies for noncompliance identified in 32 CFR 34.52(a).

(e) The remedy if it later is found that the participant, at the time it entered into the TIA, was performing on a procurement contract or other Federal award subject to the Cost Accounting Standards at 48 CFR part 30 and the cost principles at 48 CFR part 31. Unless the OIG, DoD, approves an exception (see § 37.650(c)), the TIA's terms must provide that the DCAA will perform the audits for the agreement if it later is found that the participant, at the time the TIA was awarded, was performing under awards described in § 37.650(b) that gave the DCAA audit access to the participant's books and records.

(f) Where the IPA is to send audit reports. The agreement must provide that the IPA is to submit audit reports to the administrative agreements officer and the OIG, DoD. It also must require that the IPA report instances of fraud directly to the OIG, DoD.

(g) The retention period for the IPA's working papers. You must specify that the IPA is to retain working papers for a period of at least three years after the final payment, unless the working papers relate to an audit whose findings are not fully resolved within that period or to an unresolved claim or dispute (in which case, the IPA must keep the working papers until the matter is resolved and final action taken).

(h) Who will have access to the IPA's working papers. The agreement must provide for Government access to working papers.

§ 37.665 Must I require nonprofit participants to have periodic audits?

Yes, expenditure-based TIAs are assistance instruments subject to the Single Audit Act (31 U.S.C. 7501-7507), so nonprofit participants are subject to

⁴The electronic document may be accessed at www.gao.gov. Printed copies may be purchased from the U.S. Government Printing Office; for ordering information, call (202) 512-1800 or access the Internet site at www.gpo.gov.